

**Recommendation for Council Action – Backup
Floodplain Variance Request – 1200 Barton Springs Rd.**

SUMMARY OF FINDINGS:

1. **NO SAFE ACCESS.** The maximum depth of water in the parking lot on this property is 3.6 feet during the 100-year flood event and 2.1 feet during the 25-year flood event. The maximum depth of water in the parking lot at the building is 2.3 feet for the 100-year flood event and 0.8 feet for the 25-year flood event. The velocity of the flood water at this location is very low. First responder personnel and building occupants do not have safe access to and from the building during a flood event.
2. **PROPOSED LOWEST FLOOR BELOW MINIMUM REQUIRED ELEVATION.** The existing building's lowest floor elevation is below the minimum elevation required by the Land Development Code, which requires the lowest floor elevation to be at least two feet above the 100-year floodplain elevation for properties within the Central Business Area. The lowest floor elevation of the building is 1.9 feet below the 100-year floodplain, which is 3.9 feet below the elevation required by the Land Development Code.
3. **HARDSHIP CONDITIONS FOR THE PROPERTY PARTIALLY EXIST.** The safe access rule presents a hardship for this site since safe access for the property cannot be achieved to a public right-of-way. However, there is not a hardship as defined in the Building Code for the lowest floor elevation variance.
4. **THE APPLICANT PROPOSES A FLOOD SAFETY PLAN FOR THE PROPERTY.** The applicant proposes to create and implement a flood emergency education, communication, and evacuation plan for this redevelopment. This plan will educate employees on the actions they should take if flooding is imminent. It includes assignments of responsibility, periodic drill requirements, informative signage on the property, and flood plan improvements.
5. **THE APPLICANT PROPOSES TO FLOOD PROOF THE BUILDING TO THE MAXIMUM EXTENT PRACTICABLE.** The applicant proposes to incorporate wet flood proofing techniques with the improvements to the building in order to minimize the financial costs of flooding to the building. These improvements include: flood resistant construction materials; elevated electrical systems; and GFCI outlets for every outlet in the building.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-7-94 Requirements in Central Business Area requires that the floor slab of a proposed building be at least two feet above the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to allow the existing building to be substantially improved while the lowest floor of the building is 3.9 feet lower than the elevation required by the Land Development Code.*

- II. LDC Section 25-12-3, (Local Amendments to the Building Code), Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section 1612.4.3, to allow the existing building to be substantially improved without normal access to an area that is a minimum of one foot above the design flood elevation. The entire lot is in the 100-year floodplain. The approximate depth of floodwater adjacent to the building entrance is 0.8 feet during the 25-year event and 2.3 feet during the 100-year event.*

- III. LDC Section 25-12-3, (Local Amendments to the Building Code), Section 1612.4.2 Provisions of safe refuge requires that buildings or structures constructed in the flood hazard area where the ground surface is below the design flood elevation, or where flood water velocities at the building may exceed five feet per second, shall be provided with an enclosed refuge space one foot or more above the design flood elevation, and of sufficient area to provide for the occupancy load with a minimum of 12 square feet per person.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section 1612.4.2 to substantially improve the existing building while the finished floor elevation of the building is 1.9 feet below the design flood elevation with no safe refuge provided.*

- IV. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G102.3 Nonconforming Uses prohibits substantial improvement of a structure unless the structure is changed to conform to these regulations.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section G102.3 to allow substantial improvement of an existing building without bringing the building into compliance with the current floodplain regulations.*

- V. LDC Section 25-7-152 Dedication of Easements and Rights-of-Way requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to exclude the footprint of the existing building from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, variances shall only be issued upon consideration of the following prerequisites:

PREREQUISITE

- 1) A technical showing of good and sufficient cause based on the unique characteristics of

FINDING

- 1) **CONDITION IS PARTIALLY MET.** The applicant has demonstrated a good and sufficient

the size, configuration or topography of the site.

Insufficient causes for issuing a variance may include the following:

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

2) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

3) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or ordinances.

4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

cause that justifies the safe access variance request since the redevelopment will not increase density on this property. However, the applicant has not demonstrated a good and sufficient cause that justifies the lowest floor elevation variance.

2) **CONDITION IS NOT MET.** This property could have possibly been redeveloped in a limited way that would not have been considered a substantial improvement and would not have been required to request these floodplain variances. Therefore, the failure to attain these variances would not render the lot undevelopable.

3) **CONDITION IS MET.** The proposed redevelopment does not increase flood heights. The redevelopment does not increase public safety threat since the proposed redevelopment does not increase density. Also, the applicant is attempting to minimize flood risks with the creation and implementation of the flood safety plan.

4) **CONDITION IS PARTIALLY MET.** The safe access variance is considered the minimum necessary for this redevelopment that does not increase density. The lowest floor elevation

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

5) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

variance is not considered the minimum necessary since the building could be demolished and built according to the regulations.

5) **CONDITION IS MET.** If the City Council grants these variances, staff will notify the applicant regarding flood insurance rates and flood risks.